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June 8, 1995

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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, Northwest
Room 222
Washington, D.C. 20554

JUN - 8 1995

FEDERAL COMMUNICATIONS COMMISSION
UNIT OF SECRETARY

In re: **GC Docket No. 95-21**, In the Matter of Amendment of 47
C.F.R. § 1.1200 et seq. Concerning Ex Parte Presentations
in Commission Proceedings; **Memorandum of Oral Ex
Parte Presentation**

Dear Mr. Caton:

The Federal Communications Bar Association, by its undersigned representative and in accordance with 47 C.F.R. § 1.1206(a)(2) (1994), hereby respectfully submits for inclusion in the record of the above-referenced proceeding an original and one copy of a memorandum summarizing an oral ex parte presentation made to the Senior Legal Advisor to Commissioner Andrew C. Barrett in the subject proceeding on this date.

Any questions concerning this matter may be directed to the undersigned.

Very truly yours,

John Griffith Johnson, Jr.

Chair, Ex Parte Rules Committee
Federal Communications Bar Association
c/o Bryan Cave
700 Thirteenth Street, Northwest
Suite 700
Washington, D.C. 20005-3960

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Mr. William F. Caton
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Enclosure (x 2)

cc: Lisa B. Smith, Esq., with enclosure (by hand delivery)
William E. Kennard, Esq., with enclosure (by hand delivery)
David S. Senzel, Esq., with enclosure (by hand delivery)

Memorandum of Oral Ex Parte Presentation in GC Docket No. 95-21

June 8, 1995

Present:

Lisa B. Smith, Esq., Senior Legal Advisor to FCC Commissioner Andrew C. Barrett

S. White Rhyne, Esq., President, Federal Communications Bar Association

Arthur B. Goodkind, Esq., Member, FCBA Executive Committee

John Griffith Johnson, Jr., Esq., Chair, FCBA Ex Parte Rules Committee

SUMMARY OF PRESENTATION

The FCBA opposes the Commission's proposal to extend to adjudicatory and quasi-adjudicatory proceedings the so-called "permit-but-disclose" procedures for making ex parte presentations to Commission decision-making personnel.

- **Near Unanimity of FCBA Members' Opposition to the FCC's Proposal:**

Notwithstanding the diversity of FCBA members' backgrounds, practice areas, and law-firm settings, virtually every member who made his or her views known to us on this subject opposed the FCC's proposal.

- **Perception of the Fairness of the FCC's Decision-Making:**

In adjudicatory matters, it is unheard of for a tribunal to entertain ex parte presentations in contested cases, except in extraordinary situations.

Perceptions of inequality of access to FCC decision-making personnel among different constituents of the regulated industries and their representatives.

An historical perspective -- remembering the 1950's and early 1960's.

- **Efficiency in the Dispatch of the FCC's Business:**

Litigants' strategies, and not the rules governing authorized pleading cycles, will determine the number and the timing of merits-oriented submissions.

Expansion of the record by virtue of the inclusion of post-pleading-cycle written ex parte presentations and memoranda of oral ex parte presentations.

Increased demands upon the time of FCC decision-makers to respond to requests for meetings from interested parties, to meet with such parties, and to ensure that the permit-but-disclose rules are followed.

Burdening cases with collateral disputes over adversaries' compliance with permit-but-disclose rules (e.g., the adequacy of the disclosure in memoranda of oral presentations, timing of the submission of such memoranda, regularity of the filing of copies of memoranda in the record by the FCC's clerical staff).